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Finzel et al.

SN 10/051,597

Reply Under 37 C.F.R. § 1.312

REMARKS

The above-identified application was allowed in the Office Action mailed August 25, 2004. The issue fee and publication fee payments are being submitted herewith.

Applicant respectfully requests that the following Comments on the Statement of Reasons for Allowance be entered into the record. As stated below, Applicants do not agree with, or otherwise admit to, the Reasons for Allowance of the claims as stated on the record.

With respect to claims 123-143, the invention is directed to a fiber optic cable installation structure. The structure includes a surface defining a channel having a width of about 12 mm or less with a cable disposed within the channel and a filling material overlying the cable and at least partially filling the channel.

Claims 144-160 are also directed to a fiber optic cable installation structure. Specifically, the structure recited in claim 144 includes a surface defining a channel, a cable disposed within the channel, a release element disposed within the channel and extending lengthwise along the cable, and a filler material overlying the cable and release element, which at least partially fills the channel.

With respect to the reasons for claims 161-167 and 169-171, the Reasons for Allowance dated August 25, 2004 are contrary to the record for at least the reasons discussed below. The Reasons for Allowance state that "...the Examiner has relied upon Applicant's response filed 22 June 2004 to define the scope of the claims." See p. 2 of the Reasons for Allowance. However, the Reasons for Allowance are incorrect and contrary to the record.

First, the Reasons for Allowance state that "...as set forth on pages 2 through 3 of the Remarks [from Applicants' Reply dated 22 June 2004], the claimed 'elongate body' is

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considered to be limited to a hardened sheath material for protection of the cable from rodent attack.” See p. 2 of the Reasons for Allowance. Applicants absolutely disagree with this construction and limitation of the claim language. Moreover, this claim construction is contrary to Applicants’ Reply dated 22 June 2004 (hereinafter “Applicants’ Reply”).

Specifically, the only reference made to a hardened sheath material for protection of the cable from rodent attack in Applicants’ Reply is in reference to the teaching of U.S. Pat. No. 4,437,789 (the ‘789 patent). The ‘789 patent was used as the teaching reference for sec. 103(a) rejection, which was overcome. See the Office Action dated March 22, 2004. Specifically, Applicants’ Reply states the following:

For instance, the ‘789 patent teaches that a specific object of the invention is a hardened sheath material for protection of the cable from rodent attack. See the ‘789 patent at Col. 1, ll. 54-62. The skilled artisan would have understood that rodents would not be an issue in a solid surface as defined in the present application as reproduced below because rodents are unlikely to burrow into a solid surface as defined by the present invention since it is too hard.

See p. 11 of Applicants’ Reply. Generally speaking, this passage and the paragraph from which it is taken are directed to the art of the sec. 103(a) rejection. Id. Moreover, the passage goes on to expressly state that rodents would not be an issue in a solid surface [having the elongate body disposed therein] as defined in the present application because it would be too hard for burrowing rodents. In other words, Applicants were merely pointing out that rodents do not burrow into hard surfaces such as concrete, which may be a solid surface. Not one word of the passage was directed to the recitation of the “elongate body” of the claims.

Furthermore, a hardened sheath material for protection of the cable from rodent attack is not mentioned anywhere else in Applicants’ Reply. It is beyond refute, that Applicants’ Reply

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merely refers to a "hardened sheath material" in relation to the '789 patent. Furthermore, there is absolutely no objective evidence of record that Applicants' Reply limits "elongate body" to the definition asserted in the Reasons for allowance. For at least the reasons stated, Applicants respectfully disagree with the meaning given to the recitation of "an elongate body" in the Reasons for Allowance. Rather, "an elongate body" should be given its plain and ordinary meaning.

Second, the Reasons for Allowance state that "... the claimed 'solid surface' is considered to be limited to asphalt, concrete, a paved surface of cement or mixtures thereof, and stone slab." See p. 2 of the Reasons for Allowance. Applicants' assert that the "solid surfaces" listed in the Reasons for Allowance are merely examples of "solid surfaces" and other similar materials and/or equivalents are possible with the concepts of the present invention. By way of example, other "solid surfaces" such as curbstone are listed in the claims of the present application. See claims 128, 155, 169 and p. 23 of the present application. Thus, it is not proper to limit "solid surface" to the examples given in the Reasons for Allowance.

Third, the Reasons for Allowance state that "...the recitation of a 'laying channel' is considered to be limited to a cut in the solid surface set to the respective diameter of the 'at least one optical waveguide.'" See p. 2 of the Reasons for Allowance. This is incorrect and contrary to the objective evidence of record and the recitation of claim 161. Moreover, this claim construction would not result in an operable device because the optical waveguide is disposed within a larger structure for which the width of the laying channel is sized.

Specifically, claim 161 recites that the at least one optical waveguide is disposed within at least one lengthwise extending duct defined by the elongate body and the elongate body is

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disposed within the laying channel. In other words, the width of the cut in the solid surface would be related to the width of the elongate body disposed within the laying channel, not the diameter of the at least one optical waveguide. Specifically, the present application states "...the cutting width can be set to the respective diameter of the minicable or microcable used." Thus, the claim construction given in the Reasons for Allowance does not make sense and is incorrect given the objective evidence of record.

If there are any other fees due in connection with the filing of this Amendment not accounted for, please charge the fees to our Deposit Account No. 50-0425. If a fee is required for an extension of time under 37 C.F.R. 1.136 not accounted for, such an extension is requested and the fee should also be charged to our Deposit Account No. 50-0425.

Respectfully submitted,



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